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**Before the
Federal Communications Commission
Washington, D.C. 20554**

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)	MM Docket No. 88-577
)	
LIBERTY PRODUCTIONS,)	File No. BPH-870831MI
A LIMITED PARTNERSHIP)	
)	
WILLSYR COMMUNICATIONS)	File No. BPH-870831MJ
LIMITED PARTNERSHIP)	
)	
BILTMORE FOREST)	File No. BPH-870831MK
BROADCASTING FM, INC.)	
)	
SKYLAND BROADCASTING)	File No. BPH-870831ML
COMPANY)	
)	
ORION COMMUNICATIONS)	File No. BPH-870901ME
LIMITED)	
)	
For a Construction Permit for a New FM)	
Broadcast Station on Channel 243A)	
at Biltmore Forest, North Carolina)	

To: The Commission

JOINT REQUEST FOR APPROVAL OF SETTLEMENT

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November 14, 2000

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SUMMARY

Joint Movants Biltmore Forest Broadcasting FM, Inc and Liberty Productions, L. P. request approval of the attached settlement agreement. The agreement provides for the dismissal of Liberty's application and the designation of BFB's application as the auction winner, subject to certain conditions. The agreement comports with FCC rules and is supported by appropriate affidavits regarding consideration. The Movants demonstrate here and in accompanying Memoranda that the partial settlement effected by this agreement will simplify this long-pending case, eliminate the need to resolve difficult issues with respect to the Liberty application, and thus speed service to the public. The agreement also does substantial justice to all parties to the proceeding by effectively placing them in the position they would have been in if Liberty had not participated in the auction at all.

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To: The Commission

JOINT REQUEST FOR APPROVAL OF SETTLEMENT

Biltmore Forest Broadcasting FM, Inc. (“BFB”) and Liberty Productions, L.P. (“Liberty”), by their attorneys, hereby jointly request approval of the attached settlement agreement pursuant to Section 73.3525 of the rules. In summary, the proposed agreement contemplates:

- (a) the dismissal of Liberty’s application with prejudice without penalty to Liberty;

- (b) the payment by BFB of Liberty's reasonable and prudent expenses in prosecuting its application and participating in the interim operation;
- (c) the entry into a consulting agreement between BFB and Liberty's general partner during the initial start-up of the Biltmore Forest station; and
- (d) the designation of BFB as the winner of the auction by virtue of its high bid in Round 12 of Auction No. 25.

As will be set forth in greater detail below, the proposed agreement will serve the public interest by eliminating the need for the Commission to address numerous and time-consuming issues regarding Liberty's application and will permit the prompt grant of BFB's application.

I. Background

This proceeding began thirteen years ago with the filing of some 13 applications for the newly allocated FM station in Biltmore Forest, NC. After protracted comparative hearings before Administrative Law Judge Walter Miller (ret.), Orion Communications, Ltd. was selected as the winning applicant under the then extant comparative criteria. Several years of appeals within the Commission ensued during which all but five of the applicants dropped out of the proceeding. In 1994, the Court of Appeals vacated the grant of Orion's application. Five months later Orion went on the air over the objection of its competitors. Subsequently, the Commission granted an application for joint interim operation on the Biltmore Forest channel which had been filed by a consortium of all other applicants. That interim operation ended abruptly in early 1998 when the Court directed the Commission to restore Orion to the air. Thus, Orion has been operating the Biltmore Forest station for the better part of a decade despite the vacation of its original grant as arbitrary and unreasonable.

Since 1992, this case has been to the Court no less than seven different times in different procedural postures. It has consumed an inordinate amount of the Commission's time and resources and eaten away the estates of the surviving applicants who do not have an operating radio station to support their application efforts. One of Orion's major principals died last year. One of BFB's principals died this spring. Another BFB principal died nearly a decade earlier. The Biltmore Forest case has taken on a life of its own while the hapless litigants, impaled by the process, live out their lives, squander their fortunes, marry, divorce, re-marry and die. One must be thankful that this is one of only two cases which have survived the comparative hearing gauntlet, clinging tenaciously to a tortured form of life while at the same time longing for the peace of final resolution.

These circumstances alone make this case unusual in the annals of contested FCC proceedings. The fact that Orion has been vested by the Court with an unprecedented, impregnable authorization to operate indefinitely without regard to the usual interim operating conditions of Section 73.3592(b) and without any FCC-issued license has added to the unique nature of this case, as well as having the practical effect of impeding the parties' ability to reach a full market settlement. The economic dynamics of the situation provide Orion with a disincentive to reach any settlement or to achieve any permanent resolution of the case because, as long as the proceedings continue, it can continue to operate and generate the funds necessary to prolong the proceeding still further. The case has devolved into a kind of perpetual motion machine in which every delay in the case fuels and sustains further delay. Hence the thirteen years of litigation which the parties, the courts and the Commission itself have had to endure.

Hope for a break in the logjam occurred when the Commission moved to the resolution of comparative cases by auction and the Court affirmed the Commission's decision. The

Commission had represented to the Court that auctions would speed licensing actions in contrast to the old comparative hearings. Relying on this promise, four of the five remaining applicants participated in the auction. Liberty won the auction, BFB placed second, Orion third, and Willsyr fourth. Unfortunately, qualifying issues had been added against Liberty during the initial comparative proceedings. These issues were initially resolved by the ALJ but the issues with continuing relevance were never directly addressed on appeal by either the Review Board or the full Commission. In addition to those longstanding issues, Liberty's opponents raised numerous new issues arising out of the auction process itself. These allegations and issues have now been under consideration by the Commission for almost a year with no end in sight.

II. The Proposed Settlement

The terms of the settlement proffered here for approval are relatively uncomplicated. Liberty has agreed that it will dismiss its application in exchange for reimbursement of its reasonable and prudent expenses.¹ Full details regarding these expenses are attached.

In addition, the agreement contemplates a modest consulting arrangement between BFB and Liberty's sole general partner, Valerie Klemmer Watts. Mrs. Watts served as one of the interim operation's co-general managers during the period that the interim operation was on the air. In that capacity she not only worked closely with BFB's principals and agents, but also developed a working familiarity with the Asheville radio market and its commercial and public interest needs. She is willing to make this expertise available to BFB. Mrs. Watts also gained useful insights and experience in starting a radio station from scratch in Asheville. Again, this

¹ These expenses include obligations incurred during the course of the interim operation.

experience is exactly what BFB will require when it becomes the permittee. Finally, Mrs. Watts has done considerable site work, having arranged a new transmitter site for Liberty and having arranged for the preparation of the necessary engineering to upgrade the station. All of this groundwork, information and expertise will be made available to BFB, considerably expediting the process of getting on the air at the earliest possible date. It is anticipated that Mrs. Watts will contribute most heavily during the start-up phase and early years when her experience will be most useful. The agreement also includes a covenant not to compete and restrictive covenants which will prevent Mrs. Watts from using her knowledge competitively in the market.

The fee for her consulting services and the non-compete covenant (\$75,000 over three years) has been closely tied to her expected work effort over those years. The terms of the agreement and the amount of the fee are consistent with terms and amounts which the Commission has approved in other situations. See, for example, *Tracey A. Moore dba Gifford Orion*, 9 FCC Rcd. 314, 315(1993) and *Rio Grande Broadcasting*, (FCC 00I-05, rel. July 27, 2000).

Three elements of the agreement are unique to the auction setting. First, the settlement is specifically conditioned on BFB being designated as the winner of the auction by virtue of its being the next-highest bidder after Liberty. The Commission's *First Report and Order in Docket 97-234*, 13 FCC Rcd. 15920 (1998) ("*First Report*") considered the question of how licenses would be awarded post-auction if the winning bidder defaulted or was disqualified. The Commission opined that for pre-July 1st applicants (such as we have here) "we believe that offering any construction permit on which the winning bidder defaults to the next highest bidders, rather than re-auctioning the construction permit to new applicants, would comport

with statutory requirements and would be more expeditious.” *Id.* at Para. 86. Although the present circumstances do not involve a default or disqualification, the parties have presumed that the Commission would logically follow the same principle and designate BFB the auction winner. This is an especially compelling course in a proceeding which has already consumed the better part of a generation. Because this is *terra incognita*, however, the agreement is explicitly conditioned upon the Commission following that course. Second, the agreement is conditioned upon BFB being declared the winning bidder by virtue of its high bid in Round 12 of the Auction. Round 12 was the last round in which BFB placed a high bid vis a vis anyone but Liberty. Third, the settlement is specifically conditioned on (a) the dismissal of Liberty’s application with prejudice, but without penalty to Liberty and (b) the refund in full of Liberty’s downpayment. There are numerous reasons why this disposition is fair and just to all of the remaining applicants. The parties to the settlement agreement, however, have differing perspectives as to the best procedural route to that objective. Accordingly, Liberty and BFB are simultaneously submitting separate memoranda addressing the best means of accomplishing that end. They emphasize, however, that Liberty has no objection to any such disposition provided the other aspects of the agreement are approved and implemented.

III. The Proposed Agreement is In the Public Interest

Any analysis of the proposed agreement must begin from the proposition that settlements have been and are strongly encouraged as the quickest, most effective way of resolving mutually exclusive proceedings. The Commission has historically promoted the settlement of contested licensing proceedings because settlement not only conserves the resources of the parties and the Commission but inevitably results in faster service to the public.

Rebecca Radio of Marco, 4 FCC Rcd 830 (1989). This is clearly the case here.² Congress, too, has encouraged settlement of contested cases even while authorizing auctions as a means to award licenses. 47 U.S.C. 309 (j)(6)(E) (“Nothing in [the statute authorizing auctions] shall be construed to relieve the Commission of the obligation in the public interest to use negotiation and other means in order to avoid mutual exclusivity in application and licensing procedures.”).

See also 47 U.S.C. 309(l)(3). Of course, the Commission has expressly opined that pre-July 1, 1997 applications need not be awarded by competitive bidding. *First Report, supra*, at Para. 29-30. This affords the Commission considerable discretion to fashion a remedy here even where an auction has already occurred.

The following factors argue for approval of the proposal:

1. Settlement will simplify the parties and issues. The parties to the Biltmore Forest case made numerous good faith attempts to reach a settlement, whole or partial, of the case prior to the short form filing date in August, 1999. When the anti-collusion provisions of the rules became effective, all settlement activity had to cease. After the due date for the deposit of Liberty’s downpayment in November, 1999, the parties were able to resume settlement discussions.³ The parties recognized that there were likely to be years of litigation ahead under any scenario. Accordingly, some of the parties again explored the possibility of a full market settlement. When those efforts failed, Liberty and BFB decided that a partial settlement between the two of them would nevertheless present numerous public interest

² Appropriate declarations to this effect, as required by Section 73.3525 of the rules, are attached.

³ “This [anti-collusion] prohibition becomes effective at the short-form application deadline, and ends on the post auction down payment due date.” “Closed Broadcast Auction,” Public Notice released July 9, 1999, DA99-1346 at p.4.

advantages. While the present settlement proposal is only partial, it serves to reduce the remaining applicants by 25%, immensely simplifying all subsequent proceedings in the case.

Even this partial settlement will permit the Commission to dispose of numerous difficult issues in the case which might very well otherwise have necessitated a hearing with enormous attendant delay and expense for all concerned. Liberty's application had previously been challenged on basic qualification grounds which were initially resolved by the ALJ but then ignored by the Review Board and the full Commission. These issues would have to be addressed by the Commission as part of the evaluation of Liberty's application. *Liberty Productions, LP*, 14 FCC Rcd. 7637 (1999).⁴ Any action by the Commission, whether for or against Liberty, would inevitably spawn further appeals and reconsideration petitions. That situation became further complicated by the spate of new issues which were sought by Liberty's opponents in November and December, 1999. These issues involve complex inquiry into Liberty's relationship with its limited partner and its relationship with Cumulus Broadcasting. If added, those issues have the potential to expand the proceeding to other parties in an ever widening, ever complicating, ever time-consuming spiral. In brief, while Liberty contests the various charges which have been leveled against it, it is clear that the final approval of Liberty's application could occur only after considerable further legal wrangling.

By contrast, while the ultimate grant of BFB's application is subject to inquiry arising from the comparative proceedings, unlike the case with Liberty, no issue was ever added below, much less adversely resolved by the ALJ. The only matter which must be examined with regard to BFB involves a dictum dropped by ALJ Miller as an aside in his Initial Decision to the effect

⁴ BFB's application had also been denied due to its supposed lack of a transmitter site, but the Commission's elimination of site availability as an application element mooted that issue. Liberty Productions, L.P., 14 FCC Rcd 7637 (1999).

that, had he granted BFB's 1988 site amendment request, he would have had to add a misrepresentation issue against BFB. No actual issue was ever added, nor did Judge Miller offer any explanation for his comment. The inquiry into this unexplained and unsupported comment can therefore be expected to be reasonably abbreviated. Accordingly, the parties anticipate that, with the Liberty issues removed, the remaining licensing proceedings in this case can be completed and a grant made to BFB in approximately 60 - 90 days after BFB is designated as the new auction winner. Particularly given the 13-year history of this case, anything which will expedite and simplify the case is to be desired.

2. The Biltmore Forest case is unique. As has been established above, this case is unique in the annals of communications law. Its convoluted history, its status as a hybrid hearing/auction proceeding, the direct involvement by the Court in the Commission's licensing decisions, the intense scrutiny and involvement by Capitol Hill, the on-going interim operation, and the complicated nature of the issues presented by Liberty's application all argue for action to simplify and expedite an ultimate resolution. The very uniqueness of the case gives the Commission the flexibility needed to approve a fair settlement without creating an unworkable precedent for other situations.

3. Liberty bid in good faith. The provisions of the Commission's rules assigning penalties to applicants who default on winning bids do not apply in this context. Section 1.2109(c) of the Rules requires a "defaulting" winning bidder to pay the specified penalty. However, the Rule does not contemplate or embrace a circumstance in which the dismissal of the winning application is being approved by the Commission pursuant to a settlement. Under the instant proposal, there is no default. Upon a finding that the proposed settlement would serve the public interest, there would be no basis for assessing a penalty. Accordingly, Section

1.2109(c) does not require the assessment of any penalty in this case.

This outcome is perfectly appropriate. The penalty payment provisions were designed to discourage insincere bidding and assure the integrity of the bidding process in each auction.

Amendment of Part 1 of the Rules – Competitive Bidding Procedures, 13 FCC Rcd 374

(1997). Here it is clear that Liberty placed its bids in good faith with every intention of fulfilling its obligation to pay the bid amount and full capacity to do so. Indeed, it has met every obligation to date and remains ready to remit payment of the balance of its winning bid. However, in the interests of expediting the resolution of this proceeding, Liberty is voluntarily agreeing to have its application dismissed and to relinquish its claim to the construction permit. Accordingly, grant of the relief requested here would do no violence to the purpose of the penalty rule since there is no indication that Liberty placed its bids in bad faith or is even now unwilling or unable to pay the bid amount. This being the case, Liberty should not be penalized for stepping aside in the interests of expediting the resolution of the proceeding.

4. Diminution of revenue for the Treasury should not be a factor. It goes without saying, of course, that the small diminution of funds due to the Treasury upon approval of this agreement should not be determinative of the outcome of this joint request. Congress has forbidden the Commission from applying auction payment schedules (including penalty payment provisions) solely or predominantly with a view toward maximizing revenue for the federal Treasury.⁵ The Commission's purpose, rather, must be to foster where possible the distribution of licenses to qualified small businesses like BFB. Here the benefits of this

⁵ “[I]n prescribing regulations pursuant to Paragraph 4(A) of this subsection, the Commission may not base a finding of public interest, convenience and necessity solely or predominantly on the expectation of Federal revenues from the use of a system of competitive bidding under this subsection.” 47 U.S.C. 309 (j)(7).

settlement to the public in expedition of service, simplification of the pending issues, and fairness to the parties involved all far outweigh any potential profit to the Treasury.

IV. Contingent Waiver Request

The parties to the proposed settlement agreement believe that the settlement proposed here can be effectuated and approved without the need to waive any Commission rule. However, all the reasons which compellingly support approval of the agreement would also justify waiver of any auction rule if the Commission determined that a waiver is necessary to approve this settlement. Accordingly, the parties request a waiver of the rules if that would be a more appropriate means of accomplishing the desired end.

V. Conclusion and Prayer for Relief

For the reasons set forth above, the Movants request that the Commission promptly:

- 1) approve the attached settlement agreement pursuant to Section 73.3525;
- 2) dismiss Liberty's application with prejudice;
- 3) declare BFB the auction winner by virtue of its high bid in Round 12 of Auction 25;
- 4) confirm that Liberty's downpayment should be promptly returned without the imposition of any penalty; and
- 5) initiate appropriate inquiry into BFB's qualifications for grant.

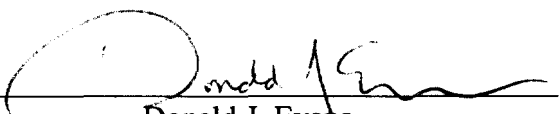
It should be stressed that the agreement and the relief requested are an integrated and mutually dependent whole. The purposes of the settlement cannot be achieved unless the entire agreement is approved.

Given the nearly 13 year history of this proceeding, given its status as a never-to-be-repeated relic of the old regime, given the enormous resources that Liberty and BFB invested in

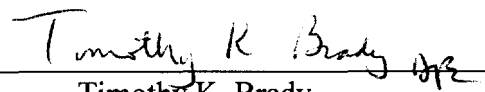
the now discarded comparative hearing process, and given the high likelihood that approval of this settlement will expedite the ultimate resolution of this case, grant of the instant motion is strongly in the public interest.

Respectfully submitted,

BILTMORE FOREST BROADCASTING FM, INC.

By: 
Donald J. Evans
Fletcher, Heald & Hildreth, PLC
1300 N. 17th Street, 11th Floor
Arlington, VA 22209
703-812-0400

LIBERTY PRODUCTIONS, L.P.

By: 
Timothy K. Brady

November 14, 2000

SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT by and between Biltmore Forest Broadcasting FM, Inc. ("BFB"), a North Carolina corporation, and Liberty Productions, L.P. ("Liberty"), a North Carolina limited partnership

WITNESSETH

WHEREAS, BFB and Liberty are applicants for a construction permit for a new radio station to serve Biltmore Forest, North Carolina (the "Station"); and

WHEREAS, Liberty was the high bidder in the auction held by the FCC to award the construction permit for the Station; and

WHEREAS, Liberty's application has been subjected to attacks by other applicants, the resolution of which is likely to lead to delay in the award of a permit;

NOW, THEREFORE, the Parties hereto agree as follows:

A. Dismissal of Liberty Application

Liberty will file an appropriate motion with the FCC requesting the dismissal of its application for the Station with prejudice.

B. Reimbursement of Expenses

1. Upon the Closing Date (as defined *infra*) BFB will reimburse Liberty's legitimate and prudent expenses incurred in the prosecution of its application for the Station as approved by the Federal Communications Commission ("FCC") in an amount not to exceed \$170,000 (one hundred and seventy thousand dollars). In addition, BFB will pay the potential obligation of Liberty to its counsel for expenses incurred in the joint interim operation of the Station in an amount not to exceed \$27,000 (twenty-seven thousand dollars). In addition BFB will pay on Liberty's behalf to Cumulus Broadcasting, Inc. \$ 50,000.00 or such lesser amount as the Commission may find to be a reasonable and prudent expense, which sum represents payment of all interest due on the loan made by Cumulus to Liberty, as well as compensation for Cumulus' costs in originating the loan.
2. It is understood that the foregoing sums include the fee paid by Liberty to participate in the FCC hearing. Liberty agrees to seek refund of that fee and will remit any refund to BFB or credit it with the payment upon receipt.

C. Consulting Agreement

The Parties acknowledge that Liberty's General Partner, Valerie Klemmer Watts developed useful knowledge of the radio business in the Asheville area during her tenure as general manager of the interim operation. BFB will therefore enter into a consulting agreement with Ms. Watts in the form attached hereto as Exhibit A. Such agreement shall become effective fifteen (15) days after the initial grant of a construction permit to BFB. In connection with that agreement, Liberty will assign or make available to BFB and/or Ms. Watts its and its agents' work product in connection with the proposed upgrade of the channel allocated to the Station.

D. Indemnification

1. BFB will indemnify Liberty against any further obligation for the debts incurred by Biltmore Forest Radio, Inc. prior to and during its interim operation of the Station.
2. Liberty will indemnify BFB against any claim by Liberty's limited partner or any other person for proceeds of this settlement.

E. Closing Date

The Closing Date for payment of the reimbursement amounts set forth in Paragraph B will be ten (10) days after the dismissal of Liberty's application becomes final.

F. Contingencies

The obligations of the Parties under this Agreement (except for the obligations set forth in Paragraph G, *infra*) shall be contingent upon:

1. FCC approval of this Agreement and the Consulting Agreement by Final Order; which approval shall include a determination by the FCC that Liberty is not liable for any penalty as a result of the dismissal of its application and the consequent non-payment to the U.S. treasury of the amount Liberty bid at auction and that Liberty is entitled to a full refund of its downpayment;
2. The FCC naming BFB the auction winner by virtue of its making the high bid in Round 12 of FCC Auction 25. The obligations of the Agreement are not, however, contingent on BFB being ultimately awarded the construction permit for the Station;

3. An amount equal to the payments to be made pursuant to Section B.1 hereof, shall have been placed in escrow within five (5) days of the Commission's release of an order approving the Agreement in accordance with the terms of the Escrow Agreement executed by the parties simultaneously herewith.

G. Joint Obligations of the Parties

BFB and Liberty will use their best efforts to seek and obtain FCC approval of this Agreement. Within three (3) days of the date hereof, the Parties will file a Joint Request for Approval of Agreement seeking approval of the terms of this Agreement and specifically requesting the actions set forth in Paragraphs A and F. In addition, BFB and Liberty will make good faith efforts to resolve any objections raised by the FCC to approval of this Agreement.

H. Representations and Warranties

Each of the Parties hereto represents and warrants that it is a limited partnership (in the case of Liberty) or a corporation (in the case of BFB) duly organized, validly existing and in good standing; has all necessary corporate or partnership power and authority to carry on its business and to enter into and perform this Agreement; all necessary action to approve the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby has been taken; the signatory to this Agreement is a duly authorized agent of the Party for whom the signatory is acting; and this Agreement constitutes a valid and binding agreement of the Party enforceable in accordance with its terms.

I. Miscellaneous

1. Final Order. As used in this Agreement, a Final Order shall mean an action by the FCC which has not been reversed, stayed, enjoined or set aside, and with respect to which no timely request for stay, reconsideration, review, rehearing or notice of appeal is pending, and as to which the time for filing any such request, petition or notice of appeal, or for review or appeal by the FCC on its own motion, has expired.
2. Timeliness. Time is of the essence wherever a date or time period is

specified for the performance of an act herein.

3. Contracts. This Agreement may be executed in duplicate counterparts and shall be considered effective upon the exchange of either original or facsimile signatures by authorized agents of the Parties.
4. Termination. This Agreement may be terminated at any time by mutual agreement of the Parties. Either Party may terminate the Agreement without further obligation to the other if the FCC has not approved this Agreement (including approval of the items set forth in Paragraphs F.2 and F.3) within sixty (60) days of its submission to the Commission, provided that a Party terminating under these circumstances shall not have taken any steps to delay FCC action. A Party may not terminate the Agreement under the preceding provision if the FCC has approved the Agreement (including the items set forth in Paragraphs F.2 and F.3) but the approval has not become final within the 60 days.
5. This Agreement shall be construed and interpreted according to the laws of North Carolina.
6. In the event of litigation arising out of this Agreement, the prevailing party shall be entitled to recover, in addition to the relief granted, all costs incurred, including reasonable attorney's fees.

Done this ____ day of November, 2000.

BILTMORE FOREST BROADCASTING FM, INC.

By Betty Gilman
Betty Gilman, President

LIBERTY PRODUCTIONS, A LIMITED PARTNERSHIP

By _____
Valerie Klemmer Watts

Done this 13 day of November, 2000.

BILTMORE FOREST BROADCASTING FM, INC.

By _____
Betty Gilman, President

LIBERTY PRODUCTIONS, A LIMITED PARTNERSHIP

By Valerie Klemmer Watts
Valerie Klemmer Watts

ESCROW AGREEMENT

This Agreement made the 13th day of November, 2000, by and between Biltmore Forest FM, Inc. ("BFB") Liberty Productions, a limited partnership ("Liberty") and Donald J. Evans, Esq.

WITNESSETH:

WHEREAS, Seller and Buyer have as of this day entered into a Settlement Agreement whereby, subject to certain conditions, BFB has agreed to pay certain sums to Liberty, relating to the dismissal of Liberty's application in the Biltmore Forest, North Carolina, FM radio proceeding, pending before the Federal Communications Commission ("FCC"); and

WHEREAS, the Agreement is subject to prior approval of the FCC and calls for the establishment of an escrow;

NOW, THEREFORE, the Seller and Purchaser mutually agree as follows:

1. Appointment of Escrow Agent; Deposit. Seller and Purchaser hereby designate and appoint Donald J. Evans, Esq. as Escrow Agent. Pursuant to the terms of the Settlement Agreement, BFB agrees to deposit the sum of TWO HUNDRED FORTY-SEVEN THOUSAND DOLLARS (\$ 247,000.00) with the Escrow Agent within five (5) days of action of the FCC, approving the Settlement Agreement (hereinafter the "Deposit").

2. Investment. The Escrow Agent shall invest the Deposit in an interest bearing account in a banking institution. All interest earned on the Deposit shall be for the account of BFB. In that regard and to that end BFB will provide the Escrow Agent with a federal tax identification number to permit the establishment of an interest bearing account. Should

BFB fail to provide Escrow Agent with a valid federal tax identification number, Escrow Agent shall be authorized to hold the Deposit in a non-interest bearing account.

3. Disbursement of Deposit. Escrow Agent shall disburse and pay over the Deposit as follows:

(a) In the event the FCC's action, approving the Settlement and dismissing Liberty's action becomes final, as defined in Section I.1 of the Settlement Agreement, then the Escrow Agent shall pay the over the Deposit to Liberty and pay the interest accumulated thereon to BFB.

(b) In the event the FCC's action, approving the Settlement and dismissing Liberty's action does not become final, as defined in Section I.1 of the Settlement Agreement, then upon exhaustion of any appeals of the denial of such approval by BFB or Liberty the Escrow Agent shall return the Escrow Deposit to BFB upon receipt of a written request of BFB to that effect.

(c) In the event the Settlement Agreement is duly terminated in accordance with its terms, then the Escrow Agent shall return the Escrow Deposit to BFB upon receipt of a written request of BFB to that effect.

Upon receiving a written request from BFB under subsections (ii) or (iii) hereof, the Escrow Agent shall provide Liberty with a copy of the instructions, but shall take no action pursuant thereto for a period of ten (10) business days. If during said ten (10) days, Liberty has not given notice (in accordance with Section 10, hereof) of its objection to the Escrow Agent paying out the Deposit in accordance with said request the Escrow Agent shall disburse the Deposit in accordance with said request. In the event of a dispute or controversy between

Liberty and BFB as to the disbursement of the Deposit (or any part thereof), the Escrow Agent shall retain the Deposit until arrangements satisfactory to the Escrow Agent have been

agreed to in writing by Seller and BFB; provided, however, that should any such dispute not be resolved within a period of sixty (60) days, the Escrow Agent shall interplead the Deposit

with court of competent jurisdiction.

4. Escrow Agent's Duties Administrative. Seller and BFB agree that the Escrow Agent's duties hereunder shall be entirely administrative and limited to those specifically set

forth herein. The Escrow Agent shall have no obligation to enforce performance by Seller or BFB of either party's obligations hereunder or under the Asset Agreement. Likewise, the Escrow Agent shall in no event be required to resolve any dispute or controversy concerning the Deposit or take any action concerning any such dispute or controversy.

As a condition to the disbursement of the Deposit (or any part hereof), the Escrow Agent may require Seller and BFB to execute and deliver to Escrow Agent written instructions with respect to such disbursement. The Escrow Agent shall not be liable for any mistake of fact or error of judgement made in good faith or for any act or omission by him of any kind other than his willful misconduct.

5. Discharge. Upon final disbursement of the Deposit in accordance with the terms of this Agreement or the interpleading of the Deposit with a court of competent jurisdiction in accordance with the terms of this Agreement, the Escrow Agent shall be discharged all of his obligations hereunder and neither Seller nor BFB shall have any claim against the Escrow Agent.

6. Reliance. The Escrow Agent may rely absolutely upon the genuineness and authorization of the signature or purported signature of any party upon any instruction, notice, release, receipt or other document delivered to the Escrow Agent, pursuant to this Escrow Agreement. The Escrow Agent shall be entitled to rely absolutely upon any written notice, instruction or signature believed by him to be genuine and shall be entitled to rely in good faith on the contents of any writing submitted to him hereunder, without any liability.

7. Indemnification. Seller and BFB, jointly and severally, agree to indemnify the Escrow Agent and hold the Escrow Agent harmless against any and all liabilities incurred by him hereunder, except for liabilities incurred resulting from the Escrow Agent's willful misconduct.

8. Interpleader. Escrow Agent shall bring an interpleader action in a court of competent jurisdiction, in accordance with Section 13, hereof, in the event of any dispute or controversy arising with respect to the disbursement of the Deposit or any other aspect of this agreement, which is not resolved within 60 days, and shall be entitled to tender the Deposit and any accumulated interest into such court for determination of the respective rights of the Seller and BFB with respect thereto. Likewise, if any action is commenced against the Escrow Agent, the Escrow Agent shall have the right to answer by way of interpleader and name the Seller, BFB and any additional persons as parties to such action. Upon initiation of an interpleader action or the answering of any action by interpleader, accompanied by the tender of the Deposit and any accumulated interest with such court, the Escrow Agent shall be deemed to have discharged his duties in full and to have no further obligation hereunder. In each of the above circumstances the Escrow Agent shall be entitled to recover from Liberty and BFB all costs incurred by him, including reasonable attorney's fees, in initiating any interpleader action or answering any action by interpleader.

9. Fees and Expenses. The Escrow Agent shall not charge a fee for his services, but shall be entitled to recover any costs incurred in accordance with Section 8, hereof.

10. Notices. Any notices or instructions contemplated by or to be provided under this Escrow Agreement shall be effective upon delivery, if delivered by hand, by courier or by certified mail, return receipt requested, addressed as follows:

If to BFB:

Ms. Betty Gilman
President
305 Vanderbilt Rd.
Asheville, NC 28803

If to Escrow Agent:

:

Donald J. Evans, Esquire
Fletcher Heald & Hildreth, PLC
1300 N. 17th Street, 11th Floor
Rosslyn, VA 22209
Fax: (703) 812-0486

If to Watts:

Ms. Valerie Klemmer Watts

11. Entire Agreement. This Agreement sets forth the entire understanding of the parties and supersedes any and all prior agreements, arrangements and understandings relating to the subject matter hereof. No representation, promise, inducement or statement of intention has been made by any party which is not embodied in this Agreement, and no party shall be bound by or be liable for, any alleged representation, promise, inducement or statement or intention not embodied herein.

12. Binding Effect. This Escrow Agreement shall be binding upon, inure to the benefit of, and be enforceable by the parties hereto and each parties' successors and assigns.

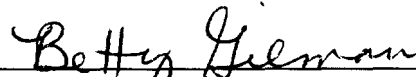
13. Governing Law. This Escrow Agreement shall be deemed a contract made and shall be construed under the laws of the State of North Carolina and the courts of Buncombe, County, North Carolina, shall have sole and exclusive jurisdiction and venue with regard to any dispute arising hereunder.

14. Counterparts. This Escrow Agreement may be executed simultaneously in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have hereunder set their hands or have caused this Escrow Agreement to be executed by their duly authorized agents, as of the day and year first above written.

BILTMORE FOREST BROADCASTING
FM, INC.

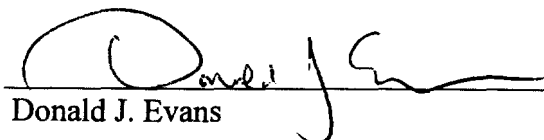
By


Betty Gilman, President

LIBERTY PRODUCTIONS, A LIMITED
PARTNERSHIP

By

Valerie Klemmer Watts


Donald J. Evans

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12. Binding Effect. This Escrow Agreement shall be binding upon, inure to the benefit of, and be enforceable by the parties hereto and each parties' successors and assigns.

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BILTMORE FOREST BROADCASTING
FM, INC.

By _____
Betty Gilman, President

LIBERTY PRODUCTIONS, A LIMITED
PARTNERSHIP

By Valerie Klemmer Watts
Valerie Klemmer Watts

Donald J. Evans

CONSULTING AND NONCOMPETE AGREEMENT

THIS AGREEMENT, by and between Biltmore Forest Broadcasting FM, Inc. ("BFB"), a North Carolina corporation and Valerie Klemmer Watts ("Watts")

WITNESSETH:

WHEREAS, on like date herewith, BFB has entered into a settlement agreement with Liberty Productions, L.P. ("Liberty"), an applicant for a new radio station in Biltmore Forest, NC ("the Station") whereby Liberty will dismiss its application in return for certain specified consideration; and

WHEREAS, Watts, the general partner of Liberty, is a long term resident of and has participated in a number of civic organizations and activities in the service area of the the Station, through which she has gained knowledge and experience with respect to the service area, has previously served as the General Manager of a radio station in Biltmore Forest in connection with the interim operation of the Station and is therefore familiar with the operation of the Station and has planned, commissioned engineering studies for and taken steps to secure an appropriate transmitter site to permit the implementation of an upgrade for the Station to operate as a Class C3 ; and

WHEREAS, BFB desires to engage Watts to provide advice and consultation related to the operation of the Station during its startup and initial years of operation under the terms herein provided, and Watts is agreeable to providing such advice and consultation under such terms;

NOW, THEREFORE, in consideration of the premises, the mutual covenants and understandings herein contained, and other valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

1. Consulting Services. BFB hereby engages Watts and Watts hereby agrees to provide advice, consultation and assistance to BFB with respect to the planing, constrution and operation of the Station in accordance with the terms and conditions stated hereafter.

1.01 Duties to be assigned to Watts and to be performed by her hereunder will be at the discretion of BFB. Watts shall be obligated to devote a maximum of 50 hours per month, each month during the term of this agreement, consulting as to the construction and operation of the Station in the following areas: ascertainment of community needs, developing appropriate programming to serve those needs, upgrading the Station if possible to a higher class and securing a transmitter site from at which such an upgrade can be obtained, and assisting in the development of EEO policies, programming and news. The precise tasks assigned by to Watts shall be stated in writing and sent to Watts at the address set forth below. It is understood that Watts hereby agrees to make herself reasonably available to BFB and that her consulting duties may take place outside the business day to accommodate other employment which she may have.

1.02 The parties hereto recognize that Watts shall act in the function of an independent contractor and nothing contained herein shall be construed as creating the relationship of employer-employee, principal-agent, or any other relationship or status other than that of independent contractor.

1.03 In connection with her assistance in upgrading the Station, Watts shall make available to BFB all studies, engineering materials, surveys, or other material prepared by or for Liberty in connection with Liberty's earlier planned upgrade of the Station. Watts shall provide assistance in any site acquisition efforts necessitated by the proposed upgrade.

2. Noncompetition. Watts hereby agrees that neither she nor any firm or corporation in which she may be interested in as partner, member, shareholder, trustee, employee, or consultant shall become or remain engaged directly or indirectly in any competitive business within a fifty-mile radius of the Asheville, North Carolina, radio market during the term of this agreement.

3. Term. The term during which exclusive consulting services under this Agreement shall be performed will commence upon the issuance to BFB of a construction permit for the Station and continue for a period of three years thereafter.

4. Trade Secrets. During the term of this Agreement and at any time thereafter, Watts will not divulge to any other person, firm, or corporation any trade secrets of BFB or the Station she may learn in the course of consulting and advising BFB or the Station. Further, upon the termination of this Agreement, Watts agrees to deliver back to BFB all records, documents, promotional materials, and all other property belonging to BFB or the business of Station then in the possession of Watts.

5. Restrictive Covenant. Watts shall not, after termination of this Agreement, use to her own advantage, or to the advantage of any other person, corporation, or entity, any information gained for or from the files or business of BFB or the Station.

6. Consideration. In consideration of her covenants and agreements hereunder, BFB shall pay to Watts a total of \$75,000.00 (Seventy-Five Thousand Dollars), which shall be paid as follows:

(a) a retainer of \$ 30,000.00 shall be be paid within 30 days of the grant of BFB's construction permit; and

(b) the balance shall be paid in equal monthly installments of \$ 1,250.00 over a term of thirty-six (36) months, commencing with the first day of the first month after the month in which the first payment is made, with payments due on the first business day of each calendar month. In the event that this Agreement is terminated pursuant to its terms, the \$ 30,000.00 retainer shall be prorated on a monthly basis over the term of the Agreement and Watts shall refund to BFB any unearned portion of the \$ 30,000.00 retainer. Additionally, Watts shall be entitled to reimbursement for any "out-of-pocket" expenses (such as travel, long distance telephone, courier services, etc.) that she shall incur in the performance of her duties.

7. Default. Failure by BFB to make any payment due to Watts hereunder within ten (10) days of the date on which such payment is due shall constitute default under this Agreement. In the event of such default, Watts shall demand payment from BFB in writing ("Demand Notice"). If payment is not thereafter received from BFB within ten (10) days of Watts' Demand Notice, then Watts may elect either to cancel this Agreement and send immediate notice thereof to BFB or to commence appropriate legal action to collect all amounts due, including the costs of such collection.

8. Termination of Agreement by Watts. Watts may terminate this Agreement upon 60 days written notice to BFB at any time at her sole option, provided that, upon such termination, Watts shall refund to BFB any unearned portion of the fee in accordance with the provisions of Section 6, hereof.

9. Termination of Agreement by BFB. BFB will have the right to terminate this agreement if at any time during the term of this agreement Watts acquires any ownership interest, voting or non-voting, in any AM or FM broadcast station serving the Asheville, North Carolina radio market or fails to provide the services specified above.

10. Modification and Waiver. No modification to this Agreement shall be deemed valid unless in writing and signed by the party against whom enforcement is sought. No

11. Notices. Notices shall be effective if sent in writing by registered or certified mail, return receipt requested, nationally recognized overnight courier, or by facsimile with written confirmation of receipt and a copy delivered the following day by nationally recognized overnight courier to the addresses listed below:

Ms. Betty Gilman
President
305 Vanderbilt Rd.
Asheville, NC 28803

Donald J. Evans, Esquire
Fletcher Heald & Hildreth, PLC
 1300 N. 17th Street, 11th Floor
 Rosslyn, VA 22209
 Fax: (703) 812-0486

Ms. Valerie Klemmer Watts

Timothy K. Brady
P.O. Box 71309
Newnan, GA 30271-1309
Fax: 770-252-1196

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to be sent to a party may be changed by that party providing written notice in accordance with this paragraph.

12. Assignment. This Agreement shall inure to the benefit of and be binding upon the parties, their successors and assigns, including any corporation, association, or partnership any party may affiliate with or control. The duties of Watts under this Agreement may not be delegated by her.

13. Entire Agreement. This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof and there are no terms other than those contained herein.

14. Construction. This Agreement shall in all respects be governed by and construed and enforced in accordance with the internal laws of the State of North Carolina, including all matters of construction, validity and performance, without regard to its principles of conflicts of laws.

15. Counterparts. This Agreement may be executed in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

16. Severability. To the extent that any part of this Agreement may be invalid, illegal or unenforceable, it is intended that the remaining parts insofar as possible and reasonable shall be effective and enforceable.

17. Headings. The headings of the paragraphs of this Agreement are inserted as a matter of convenience and for reference purposes only and in no way define, limit, or describe the scope of this Agreement nor the intent of any paragraph hereof.

18. Litigation Costs. In the event of litigation arising out of this Agreement, the prevailing party shall be entitled to recover, in addition to the relief granted, all costs incurred, including reasonable attorney's fees.

IN WITNESS WHEREOF, BFB and Watts have hereunto set their hands as of the day and year first above written.

Biltmore Forest Broadcasting, FM, Inc.

By: Betty Gilman

President

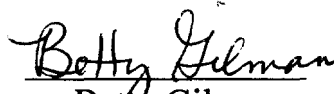
Valerie Klemmer Watts

Valerie Klemmer Watts

DECLARATION OF BETTY GILMAN

I, Betty Gilman, President of Biltmore Forest Broadcasting FM, Inc. ("BFB"), an applicant for a new FM radio station to serve Biltmore Forest, NC ("the Station"), hereby declare under penalty of perjury as follows:

1. BFB's application for the Station was not filed for the purpose of reaching or carrying out an agreement with any other applicant regarding the dismissal or withdrawal of its application.
2. The Settlement Agreement between BFB and Liberty Productions, L.P. sets forth the complete agreement between BFB and Liberty. Other than as set forth in the agreement, no consideration has been promised or paid to Liberty or its principals in return for the dismissal of Liberty's application.
3. I believe that approval of the Settlement Agreement is in the public interest. The agreement partially resolves a comparative proceeding which has languished at the Commission since 1987, and, absent a settlement, would drag on for additional years. By eliminating Liberty as an applicant the issues necessary for the Commission to resolve will be significantly simplified. The proposed settlement will also speed the provision of additional FM service to Biltmore Forest, the community adjacent to my community.
4. I declare under penalty of perjury that the foregoing statement is true and correct to the best of my knowledge and belief.


Betty Gilman 11/13/00
Date

DECLARATION

I, Valerie Klemmer Watts, hereby certify:

1. That I am the General Partner of Liberty Productions, a Limited Partnership ("Liberty"), applicant for a Construction Permit for a new FM broadcast station to operate on channel 243C3 at Biltmore Forest, North Carolina, which application is presently pending before the Federal Communications Commission and bears the file number BPH-870831MI. This application is mutually exclusive with four other pending applications for the same facilities.

2. I further certify that there has been no consideration given, promised to, received by, or promised by Liberty or any agent or employee of Liberty in connection with the proposed partial settlement of the conflict resulting from the above-referenced mutually exclusive applications, except as set forth in the attached Settlement Agreement and Consulting Agreement.

4. I further certify that Liberty's above-referenced Application was not filed for the purpose of reaching or carrying out a settlement.

I hereby certify under penalty of perjury that the above statement is true and correct.

Signed and dated this 10 day of November, 2000.



VALERIE KLEMMER WATTS

DECLARATION

I, Valerie Klemmer Watts, hereby certify:

1. That I am the General Partner of Liberty Productions, a Limited Partnership ("Liberty"), applicant for a Construction Permit for a new FM broadcast station to operate on channel 243C3 at Biltmore Forest, North Carolina, which application is presently pending before the Federal Communications Commission and bears the file number BPH-870831MI.

2. That I have personal knowledge of the amount of the expenses legitimately and prudently incurred by Liberty to date in the preparation, filing and prosecution of its above referenced Application, which include, but are not limited to the following:

Engineering fee for preparation, filing and amendment of the application	3,120.00
Application filing fee	1,800.00
Hearing fee	6,000.00
Attorney's fees and costs for preparation, filing and prosecution of application	125,000.00
Hearing costs paid by Attorney from Trust Account, utilizing funds deposited by the Applicant	2,268.89
Travel/Lodging (2 persons)	1,000.00
Long Distance Toll Charges	261.94
Postage	22.70
Local Attorney's fees and costs for limited partnership organization, Federal District Court proceedings, local review of loan, security, settlement and other agreements, local record investigations, and other related services between August, 1987 and November, 2000	31,800.00

TOTAL: \$ 171,273.53

3. That I have personal knowledge that Liberty contributed a total of Five Thousand Dollars (\$ 5,000.00) to the joint interim operation of the Biltmore Forest station by the joint interim operator, Biltmore Forest Radio, Inc.

4. That sum of the above itemized out of pocket expenses incurred by Liberty in the preparation, filing and prosecution of its Application and contribution to Biltmore Forest Radio, Inc. for the joint interim operation equals:

\$ 176,273.53

I hereby certify under penalty of perjury that the above statement is true and correct.

Signed and dated this 10th day of November, 2000.


VALERIE KLEMMER WATTS

CERTIFICATE OF SERVICE

I, Deborah N. Lunt, a secretary with the law firm of Fletcher, Heald & Hildreth, P.L.C., certify that a true copy of the foregoing "Joint Request for Approval of Settlement" was sent by first class mail, postage prepaid, this 14th day of November, 2000, to the following:

Timothy K. Brady, Esq.
Law Offices of Timothy K. Brady
P.O. Box 71309
Newman, GA 30271-1309

Mr. Stephen Yelverton
c/o Ludwig & Robinson
601 13th Street, NW
Suite 500 North
Washington, DC 20005

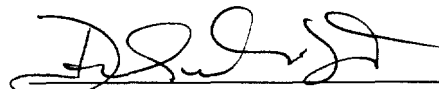
Mr. Lee Peltzman
Shainis & Peltzman
1850 M Street, N40 Suite 290
Washington, DC 20036-350

Mr. Robert DePont
140 South Street
P.O. Box 386
Annapolis, MD 21404

Mr. John Riffer*
Associate General Counsel
Federal Communications Commission
445 12th Street, NW
Washington, DC 20554

James Shook, Esq.*
Enforcement Bureau
Hearings Division
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

*** Via Hand Delivery**



Deborah N. Lunt